

Reginald Bretland, *Serjeant*
at Law, and Robert Fowle, } APPELLANTS.
Executors of Sir Thomas
Fowle,

Jonathan Cope, Will. Cope, and
Anth. Cope, (Sons of Jonathan
Cope and Susannah his Wife, } RESPONDENTS.
(who was Daughter of Sir Tho.
Fowle,) by their Guardians,

The Appellants C A S E.

•• Note, Although Serjeant Bretland be named an Executor and Trustee in Sir Tho. Fowle's Will, yet he never proved the same, nor possessed himself of any Part of the Testator's Estate.

THAT the Respondents, after their said Mother's Death, brought a Bill in the High Court of *Chancery*, against the Appellants, and against *John Berkeley*, Esq; (Second Husband, and Executor of the said *Susannah* their Mother) and obtained a Decree, That the Appellants, who by the Advice of Able Council had paid 3480 l. to the Respondent's Mother, to enable her to pay the Debts of her Husband, *Jonathan Cope*, the Respondents Father should answer and pay the same over again, and lay it out in a Purchase of Lands and Hereditaments, and Settle the same in such Manner as in the Decree is mentioned, and the Master was to allow a reasonable Maintenance for the Respondents (the Infants) and to Tax the Respondents (the Guardians) their Costs.

THAT the Appellants, (together with the said *John Berkeley*) being advised that the said Decree was erroneous, Appealed to the *Right Honourable the Lords in Parliament*, and upon hearing of the said Appeal, the Decree was affirmed, where in the Appellants do Acquiesce.

THAT the Respondent, *Jonathan Cope*, (on whom the Lands when purchased are to be Settled) hath an Estate of 800 l. *per Annum* in Possession, and 3000 l. *per Annum* in Reversion, or thereabouts, which is sufficient to answer the Guardians the Costs of the said Suit; and the Respondent, *William Cope*, hath 76 l. *per Annum*, and the Respondent, *Anthony Cope*, 50 l. *per Annum* in Possession, besides 200 l. *per Annum*, or thereabouts, apiece in Annuities, after the Death of Sir *John Cope*.

YET (with Intent farther to load the Appellants) the said Guardians (who have Inrolled the said Decree) since the Hearing on the Appeal, have Taxed their Costs between themselves) and served the Appellants with a *Subpoena* for the same, and took out an *Attachment* against them for Non-Payment thereof, although the Appellants are not Ordered by the said Decree, (as they humbly Apprehend) to pay the Costs, which Proceedings the Appellants are advised is a great Abuse, and not Warrantable.

THAT upon a Motion by the Appellants Council, to the *Right Honourable the now Lord-Keeper*, the Thirteenth of *July* last, complaining of the said Practice, his Lordship would not deliver any Opinion therein, but directed the Appellants to Apply to the *Lords in Parliament*, to Explain the Decretal Order, as to the Payment of Costs.

NOW for that there did not appear any Wilful Breach of Trust in the Appellants, for that they had the Opinion of Council, who had Advised, That the Respondents Mother had a Right to receive the said 3480 l. before the Appellants paid her the same.

AND for that the Court of *Chancery* did look upon the Respondents Demands of the said Money, were not clear or plain, but on the contrary, that it was a disputable and doubtful Point, and the Cause took up in hearing Three Days, viz. 4th. 9th. and 23d. of *July*, 1698.

AND for that the Court of *Chancery* (who made the Decree, and heard all the Circumstances in the said Cause) did so far consider the Appellants Misfortune, in paying so great a Sum of Money twice over, that they did not think it a Case proper as it is humbly apprehended) to make them pay any Costs, which would have expressly been so declared, if it had been intended.

AND for that the Money decreed to the Respondents (besides the Estate before mentioned, which the Respondents had before the said Suit) is abundantly more than sufficient to reimburse the said Guardians their Costs.

AND for that the Appellants not being Ordered, (as was apprehended) to pay the said Costs, never concerned themselves about the same, or so much as attended the Taxing thereof, but the same were Taxed *ex parte*.

Therefore the Appellants do humbly Hope, That the *Right Honourable the Lords* will not see any Cause to Add to the said Decree, or to Order the Appellants to pay the said Costs.

John Roberts